

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER****UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST M/s. PRABHUDAS LILLADHAR PRIVATE LIMITED.****BACKGROUND**

1. Ojas Technochem Products Limited was promoted as a private limited company on September 11, 1990 under the name of Ojas Tar Private Limited with the Registrar of companies, Gujarat at Ahmedabad. Subsequently Ojas Tar Private Limited was converted into public limited company and the name of the company was changed to Ojas Technochem Products Limited (hereinafter referred to as OTPL). At the time of the public issue in the year 1993, it was stated in the prospectus of OTPL that it manufactures industrial bitumen, roofing belts and bitumals.
2. OTPL had made a preferential allotment to below mentioned allottees on 13th January 2000. The allotment was made for 60,00,000 equity shares of Rs.10/- each out of 64,09,350 equity shares offered. The details of preferential allotment of equity shares are as under:

Sr.	Folio No.	Name of Allottees	Share Certificate No. From - To	DNR No. From - To	No. of Shares
1	P00015	Nrupesh C. Shah	85001 - 91000	8851051 - 9451050	600000
2	P00016	Falguni N. Shah	91001 - 97000	9451051 - 10051050	600000
3	P00017	Pratima G. Jhaveri	97001 - 103000	10051051 - 10651050	600000
4	P00018	Ankit G. Jhaveri	103001 - 109000	10651051 - 11251050	600000
5	P00019	Shailesh S. Jhaveri	109001 - 115000	11251051 - 11851050	600000
6	P00020	Harsha M. Shah	115001 - 121000	11851051 - 12451050	600000
7	P00021	Annal A. Jhaveri	121001 - 127000	12451051 - 13051050	600000
8	P00022	Sheetal A Jhaveri	127001 - 133000	13051051 - 13651050	600000
9	P00023	Yogesh K. Bhavnagari	133001 - 139000	13651051 - 14251050	600000
10	P00024	Saumil A. Bhavangari	139001 - 145000	14251051 - 14851050	600000

			Total	6000000
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3. In addition to that OTPL had also made preferential allotments of 1,00,00,000 shares, 78,80,000 shares and 3,00,00,000 on 1st August 2000, 3rd August 2000 and 23rd November 2000 respectively, as per information provided by the Vadodara Stock Exchange (hereinafter referred to as VSE). These shares were listed on VSE on 5-10-2000, 25-10-2000 and 15-12-2000 respectively. OTPL made further allotment of 5,00,00,000 shares on swap basis on 19th October, 2000, however, these were not listed at any exchange. The preferential allotment of 60,00,000 shares as detailed above and other preferential allotments subsequent thereto were not listed at The Stock Exchange, Mumbai. The preferential allotment of 60,00,000 shares was, however, listed on VSE on 17th January 2000.
4. OTPL was moderately illiquid scrip during January 1999 to October 1999 except for a few occasions when occasional liquidity was observed. However the scrip witnessed heavy liquidity during November 1999 to February 2000 along with rise in price. On 9th February 2000 the number of shares traded had reached 33,13,100 and the price had gone to Rs. 23.60 (closing price) from the volume of 27,500 shares and the close price of Rs. 3.55 on 1st November 1999.
5. M/s. Prabhudas Lilladher Pvt. Ltd. (hereinafter referred to as PLPL) traded in the scrip of OTPL during November 1999 to March 2000. During the period PLPL made gross buy of 6,24,000 shares of OTPL and gross sale of 18,69,500 shares of OTPL thereby affecting net sale of 12,45,500 shares of OTPL.
6. It is observed from the records that, PLPL did their major transactions for their unregistered sub broker M/s. Jyotish Bhogilal Stock Brokers Private Ltd (hereinafter referred to as JBSPL), member Ahmedabad Stock Exchange (hereinafter referred to as ASE) and JBSPL have traded for Parshwa Finance (Proprietor, Piyush Jhaveri) whereas Parshwa Finance have traded for M/s.

Rajesh N. Jhaveri, member ASE; and Shri Rajesh N. Jhaveri in turn have traded for Mrs. Hansaben J. Shukla and sold 10,27,800 shares at different rates during the given period. JBSPL was not a registered sub broker while dealing in the scrip of OTPL through PLPL.

7. A total quantity of 2,60,500 unlisted shares were bought by PLPL and 4,61,800 were sold, thus PLPL sold a net quantity 2,01,300 unlisted shares in the market. Majority of the shares sold by PLPL belonged to third party, mainly promoters/directors of OTPL. In view of the above transactions of the member in the scrip of OTPL, an enquiry was recommended into the possible violations of Clause A (2) of the Code of Conduct prescribed for Stock Brokers as mentioned in Schedule II of Regulation 7 of the SEBI (Stock Brokers and sub-brokers) Regulations, 1992 and the circulars SEBI/SMD/Circular 3/97 dated 31.03.97 and SEBI/SMD/Policy/Circular 3/98 dated 16.01.98.

ENQUIRY REPORT AND FINDINGS

8. Having considered the investigation report, Chairman, SEBI, vide order dated 22.07.04 appointed an Enquiry Officer to enquire into the involvement of PLPL for trading in the shares of OTPL. The Enquiry Officer had submitted his report on 24.11.04. The findings and conclusions of the Enquiry Officer in his report are as follows:

“I have taken into consideration the investigation report, the charges against and the replies thereof by the Broker and the documents furnished by them. The following issues arise for consideration:

A. Whether the Broker had dealt in unlisted shares

B. Whether the Broker failed in due diligence

C. Whether the Broker is guilty of dealing with unregistered sub-broker.

A. The first issue is whether the broker had dealt in unlisted shares

I find from the investigation report that the broker had a gross purchase of 6,24,000 shares and a gross sell position of 18,69,500 shares. All the transactions in the scrip were undertaken by their sub-broker Jyotish Bhogilal Stock Brokers Pvt. Ltd., who is Members of ASE. It is alleged that the broker has dealt in shares which were unlisted. The broker in reply to this allegation has stated that the bad delivery occurred because of late intimation by the exchange. I have gone through the notice No. 25810/99 dated 15th September, 1999 issued by the exchange informing the members that with effect from Thursday, the 16th September, 1999, the new securities of Ojas Technochem Products Limited are listed on the exchange.

I have also gone through the notice no.39806/2000, February 02, 2000, issued by BSE which is in continuation of its previous notice No. 25810/99 stated alone. I have noted that vide the said notice BSE informed the members that the correct distinctive number of 8,40,150 equity shares allotted to promoters and their relatives on preferential basis is 80,10,901 to 88,51,050 and not as stated in the aforesaid notice. It was also intimated by the exchange that these shares were not transferable upto 16th July, 2001 and would not be good delivery in the market till that period.

It is further brought out by the member that they delivered shares of OTPL with DNR No. above 88,51,050 which were treated as good delivery as BSE did not issue any notice to treat the shares as bad delivery. I have noted that as per the procedure prevalent during the relevant period, Broker was required to submit floppy containing details of DNR nos. of physical shares delivered by them as pay in which was done by the Broker. BSE, however, never rejected the shares. I have observed that there was no objection received during the relevant period from buying brokers as well.

I, therefore, hold that there is merit in the argument of the broker and agree that in the absence of any information/rejection from the exchange, the broker has no means to know that a specific lot of shares of a listed company are unlisted. I, therefore, note that the broker has not willfully dealt in unlisted shares but has done so due to miscommunication and lack of knowledge. The broker has endeavored to deliver shares in line with BSE's periodic Notices regarding unlisted shares. I note that if at all there is any fault, it is the negligence on the part of the company and contributory negligence on the part of the Exchange, but it is beyond the scope of this enquiry to give a finding.

B. Next issue that arises for consideration is that whether the Broker led in due diligence while offloading the shares of promoters.

It is alleged in the show cause notice that Broker failed in due diligence in offloading the shares of promoters. It has not been stated anywhere as to whom the said shares belonged to. It has also not been brought on record that Broker knew of the fact that the shares were dealing for clients belonged to promoters. It has also not been stated anywhere that Broker had any connection with the promoters.

Broker has been consistently saying that he was not having any relation with the promoters. I, therefore, hold that Broker had not played any role in off loading the shares belonging to promoters.

As already held above, there is no evidence to prove that Broker knew that the shares dealt by the sub-broker were actually unlisted or that they belonged to promoters or that the said shares were in any way incapable of being traded on the stock exchange. Therefore, I hold the Broker not guilty of the said charge.

C. The other issue is whether the Broker is guilty dealing with an unregistered sub-broker.

It is an admitted fact the Jyotish Bhogilal Shah, a Member of ASE traded in the scrip through the Broker as their sub-broker. Broker contended that they were not dealing with any unregistered entity since JBSPL is registered as a Broker with SEBI being a Member of ASE.

It is also an admitted fact that JBSPL has not been registered with SEBI to act as a sub-broker of the Broker. SEBI vide Circular no. SEBI/SMD/Cir/3/97, dated 31/03/97 and SEBI/SMD/Policy/Cir 3/98, dated 16/01/1998 mandated that the members of one exchange, for dealing through members of another exchange have to necessarily be registered themselves as sub-brokers.

I have gone through the circulars mentioned in the show cause notice. Circular dated 31/03/1999, inter-alia, stipulated as under:

“No broker shall deal with a person who is acting as a sub-broker unless he is registered with SEBI. It shall be the responsibility of the broker to ensure that his clients are not acting in the capacity of a sub-broker unless he is registered with SEBI as a sub-broker or is recognized by the stock exchange as a remisier”.

The Circular dated 16/01/1998, inter-alia, stipulated as under:

“This matter was discussed by SEBI separately with the heads of some major Stock Exchanges. In this connection, it has been decided that the members of stock Exchanges executing transactions of his clients through the members of their Exchanges are to be treated as a “sub-broker”. In terms of Rule 3 of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 read with Section 12 of SEBI Act, no stock broker or sub-broker shall buy, sell, deal in securities unless he holds a certificate granted by the Board under the regulations. Thus, it is necessary for any person who acts as sub-broker to hold Certificate of Registration as a sub-broker granted by SEBI and accordingly the members of Stock

Exchanges who also act as sub-brokers should hold a separate registration with SEBI as a sub-broker. However, presently some of the members of exchanges who are acting as sub-brokers through the members of other exchanges have not obtained separate registration from SEBI to act as sub-brokers.

In view of the above, it is advised that the members of the stock exchanges who are acting as sub-brokers through the members of other exchanges should obtain Certificate of Registration from SEBI to act as a sub-broker under SEBI (Stock Brokers and Sub-Brokers) Rules & Regulations, 1992”

I have noted from the above two circulars that the first circular puts the onus on the broker to ensure that his clients are not acting as unregistered sub-brokers and the second circular mandates that it is for the entities acting as sub-brokers to register themselves as sub-broker if they act through members of other stock exchanges for their clients.

Broker, however, contended that BSE vide notice No.30715/99 notified procedure for installing terminals at other places. The said circular inter-alia stated as under:

“Members of the Exchange are hereby informed that the SEBI vide its Circular dated 15/10/1999 had permitted every Stock Exchange to set up its trading terminals at any place in the country” As mentioned in the Circular, this is in supercession of the circular dated 30th October 1996 under which certain restrictions were put on the exchanges to expand their terminals to these centers where Registered Stock Exchanges were located. As a result of this new circular, one Exchange is now permitted to set up its Bolt terminals at any place in India.

The Exchange has, therefore, decided to allow its members to install its BOLT terminals in all metro cities and other areas having stock exchanges who have not signed MOU with one exchange and where stock exchange has not allowed its members to set up its trading terminals. Accordingly members are now permitted to install terminals in the following cities:"

I have noted that the list given there under including Ahmedabad Stock Exchange, where the member installed its trading terminal.

Member also brought on the record a Circular notice No. 54809/2000, dated 01/07/2000 – which inter-alia stated as under:

“Sub: Members of Stock Exchanges acting as sub-brokers.

Members are aware that SEBI has directed that no member of a Stock Exchange shall deal with person who is acting as a sub-broker unless he has obtained Certificate of Registration SEBI to act as a sub-broker under SEBI (Stock Brokers and Sub-Brokers) Rules & Regulations 1992. SEBI has put the onus on the member to ensure that his clients are not acting in the capacity of a sub-broker without registration.

With the expansion of BOLT TWSs to centers outside Mumbai, many members of the Exchange have allotted their BOLT TWS's to members of other Exchanges.

SEBI has clarified that members of Exchanges executing transactions of their clients through the members of other Exchanges are to be treated as sub-brokers. Accordingly, members of Stock Exchanges who also act as sub-brokers should hold a separate registration from SEBI as a sub-broker.

Members are therefore advised that if they have allotted their BOLT TWS's to the members of other Exchanges, they are required to get the

members of other Exchanges registered as their sub-brokers immediately.”

I have noted that JBSPL was registered as sub-broker immediately after issuance of the notice by BSE. Hence, Broker had dealt with JBSPL as unregistered sub-broker for a limited period of time.

I have further noted that the Hon’ble Chairman, in the matter of Sawaca Business Machines Ltd., had accepted the above argument of the Broker where also JBSPL acted as their sub-broker without registration. The said order recorded and accepted the findings of the learned enquiry officer as under:

“The Enquiry Officer also found that PLPL had transacted for JBSPL, the fact of which was not disputed by PLPL. Enquiry Officer has also found that as soon as BSE issued a notice regarding the need for obtaining registration as a sub-broker, PLPL had taken steps to register JBSPL as a sub-broker and completed the process. Thus, JBSPL remained as un-registered sub-broker of PLPL for a limited period of time i.e. from the date of SEBI circular/s and reminder notice of BSE. However, since PLPL had complied with the notice of BSE as soon as it was issued, Enquiry Officer intended to give the benefit of doubt to PLPL and accept the submission of PLPL in this regard that it was under the bonafide belief that a member of another exchange need not register separately as a sub-broker. Enquiry Officer, therefore, observe that the allegations made against PLPL of having violated the SEBI circulars and code of conduct of brokers, albeit for a temporary period, could be regarded as a violation of technical in nature and PLPL may not be punished for the same.”

I have noted that the explanation of the broker that they were not dealing with any unregistered entity since they were dealing with a registered broker as a member of another stock exchange is not tenable. In view of

the above notices of BSE and circulars of SEBI, I observe that certain amount of confusion was prevailing on this issue and it was not clear whether brokers of BSE who installed terminals at other exchanges have to register the members of such exchanges as sub-brokers while dealing with them.

However, as stated above, the broker for some time was dealing with an entity which was not registered as sub broker and hence, technically violated the SEBI circulars mentioned above.”

In view of the above findings, the Enquiry Officer has found PLPL technically violating the specified SEBI circulars and has therefore recommended a minor penalty of warning be issued to PLPL.

SHOW CAUSE NOTICE AND REPLY AND FINDINGS

9. Pursuant to receipt of the Enquiry Report, a notice dated 10.12.04 was issued to PLPL asking them to show cause as to why a minor penalty of warning should not be issued against them. PLPL had replied vide its letter dated 14.12.04 to the said show cause notice, wherein they had not made any specific submissions.
10. I have considered the Enquiry Report recommending a warning to be issued to PLPL. I have also noted that PLPL has no submission to make against the recommendation made by the Enquiry Officer.
11. I agree with the finding of the Enquiry Officer that PLPL had violated the SEBI Circulars No. SEBI/SMD/Cir/3/97, dated 31/03/97 and SEBI/SMD/Policy/Cir 3/98, dated 16/01/1998 by dealing with an unregistered sub-broker for a short period.

ORDER

12. Taking into account the nature of violations committed by M/s. Prabhudas Lilladher Private Limited, I find it would be sufficient to give a warning to the

member to be careful not to carry on activity of such nature in the future. Therefore, in exercise of the powers conferred upon me by virtue of Section 19 of the Securities and Exchange Board of India Act, 1992 read with regulations 13 (4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby warn the member M/s. Prabhudas Lilladher Private Limited to be careful in the carrying on of their activities and to avoid such activities in the future.

Place : Mumbai

MADHUKAR

Date : 12.01.2006

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA